

1 Michael D. McLachlan (State Bar No. 181705)  
2 LAW OFFICES OF MICHAEL D. McLACHLAN, APC  
3 10490 Santa Monica Boulevard  
4 Los Angeles, California 90025  
5 Telephone: (310) 954-8270  
6 Facsimile: (310) 954-8271  
7 mike@mclachlanlaw.com

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Los Angeles Superior Court

MAY 21 2010

John A. Clarke, Executive Officer/Clerk

Y  Deputy  
Victor Sino-Cruz

5 Daniel M. O'Leary (State Bar No. 175128)  
6 LAW OFFICE OF DANIEL M. O'LEARY  
7 10490 Santa Monica Boulevard  
8 Los Angeles, California 90025  
9 Telephone: (310) 481-2020  
10 Facsimile: (310) 481-0049  
11 dan@danolearylaw.com

12 Attorneys for Plaintiff Richard A. Wood

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 RICHARD A. WOOD, an individual, on behalf  
16 of himself and all others similarly situated,

17 Plaintiff,

18 v.

19 A. V. Materials, Inc., a California Corporation;  
20 A.C. Warnack, as Trustee of The A.C. Warnack  
21 Trust; AV Solar Ranch 1, LLC; Adams Bennett  
22 Investments, LLC; Alta Vista SunTower, LLC;  
23 Antelope Valley Country Club Improvement  
24 Company, Inc., a business entity of form  
25 unknown; Antelope Valley East-Kern Water  
26 Agency, a California Municipal Corporation;  
27 Antelope Valley Water Storage LLC; Arklin  
28 Brothers Enterprises, a business entity of form  
unknown; Philip H. Arklin; Gene T. Bahlman;  
William Barnes; Julie Barnes; William Barnes  
as Trustee of the William R. Barnes & Eldora  
M. Barnes Family Trust of 1989; Maria Balice;  
Norman Balice; Randall Blayney; Bolthouse  
Properties, LLC; John Boruchin, as Trustee for  
the John and Dora Boruchin Living Trust; Dora  
Boruchin, as Trustee for the John and Dora  
Boruchin Living Trust; Britton Associates, LLP;

Case No.:

BC 509546

(related to JUDICIAL COUNCIL  
COORDINATION PROCEEDING No. 4408;  
Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

CLASS ACTION COMPLAINT

1  
CLASS ACTION COMPLAINT

1 Thomas M. Bookman; Burrows, Bruce; 300 A  
2 40 H, LLC; Bujulian Brothers, Inc., a business  
3 entity of form unknown; Bushnell Enterprises,  
4 LLC; B.J. Calandri; John Calandri; John  
5 Calandri as Trustee of the John and B.J.  
6 Calandri 2001 Trust; Calmat Land Company, a  
7 business entity of unknown form; Sal Cardile;  
8 Connie L. Cardile; Efren Chavez; Luz Chavez;  
9 Consolidated Rock Products, a business entity  
10 of form unknown; Castle Ranch Estate, a  
11 business entity of form unknown; Cameron  
12 Properties, a business entity of form unknown;  
13 City of Los Angeles; Florence Cernicky as  
14 Trustee of the Cernicky Trust; Copa De Oro  
15 Land Company, a California general  
16 partnership; County Sanitation District Number  
17 14 of Los Angeles County; County Sanitation  
18 District Number 20 of Los Angeles County;  
19 Crystal Organic Farms LLC; Del Sur Ranch,  
20 LLC; Diamond Farming Company; Genz  
21 Development, a business entity of form  
22 unknown; Steven Godde as Trustee of the  
23 Forrest G. Godde Trust; Lawrence A. Godde;  
24 Lawrence A. Godde and Godde Trust; Robert  
25 Gorrindo; Phillip Gorrindo; Robert Gorrindo as  
26 trustee of the Gorrindo Family Trust; Laura  
27 Griffin; Gaskell SunTower LLC; Granite  
28 Construction Company, a business entity of  
form unknown; Grimmway Enterprises, Inc., a  
business entity of form unknown; H&N  
Development Co. West, Inc., a business entity  
of form unknown; Steven Harris; Healy  
Enterprises, Inc., a business entity of form  
unknown; Healy Farms, a business entity of  
form unknown; David Herrmann; High Desert  
Investments, LLC; Holliday Rock Co., Inc., a  
business entity of form unknown; Clinto Huth;  
Habod Javadi; Eugene V. Kindig; Beverly A.  
Kindig; Paul S. Kindig; Sharon R. Kindig;  
Kootenai Properties, Inc., a business entity of  
form unknown; Gailen Kyle; Gailen Kyle as  
Trustee of the Kyle Trust; James W. Kyle;  
James W. Kyle as Trustee of the Kyle Family  
Trust; James W. Kyle as Trustee of the Kyle  
Family Trust; Julia Kyle; Wanda E. Kyle; Little  
Rock Sand and Gravel, Inc., a business entity of  
form unknown; LV Ritter Ranch LLC; Landinv,  
Inc., a business entity of form unknown; Lapis

1 Land Company, LLC; Lebata, Inc., a business  
2 entity of form unknown; Larry V. Leduc; Sonia  
3 S Leduc; Leslie Property; Littlerock Aggregate  
4 Co., Inc. dba Antelope Valley Aggregate, Inc., a  
5 business entity of form unknown; David S.  
6 Mason; Jose Maritorena as Trustee of the  
7 Maritorena Living Trust; Jose Maritorena;  
8 Marie Maritorena; Richard H. Miner; Monte  
9 Vista Building Sites Inc.; Mountain Brook  
10 Ranch, LLC; Barry S. Munz; Terry A. Munz;  
11 Kathleen M. Munz; Patty Murphy; Eugene B.  
12 Nebeker; R and M Ranch, Inc., a business entity  
13 of form unknown; Richard Nelson; Michael  
14 Nelson; Robert Jones; New Anaverde, LLC;  
15 Nibbelink Family Trust; Northrop Grumman  
16 Corporation; Palmdale Hills Property, LLC;  
17 Robert D. Raney, as Trustee for the Robert and  
18 Shirley Raney Living Trust; Shirley B. Raney,  
19 as Trustee for the Robert and Shirley Raney  
20 Living Trust ; John Recca; Adriene Recca; Edgar  
21 C. Ritter; Paula E. Ritter; Paula E. Ritter, as  
22 Trustee of the Ritter Family Trust; Red Dawn  
23 SunTower, LLC; Rosamond Ranch, ; SGS  
24 Antelope Valley Development LLC; Sahara  
25 Nursery, a business entity of form unknown;  
26 Mabel Selak; Jeffrey L. Siebert; Nancee J.  
27 Siebert; Saint Andrew's Abbey, Inc., a business  
28 entity of form unknown; Service Rock Products,  
L.P.; Sheep Creek Water Company, a business  
entity of form unknown; Sheldon R. Blum,  
Trustee for the Sheldon R. Blum Trust; Elias  
Shokrian; Shirley Shokrian; Sierra SunTower,  
LLC; Sorrento West Properties, Inc., a business  
entity of form unknown; Tejon Ranchcorp, a  
business entity of form unknown; Tierra Bonita  
Ranch Company, a business entity of form  
unknown; Beverly Tobias; Triple M Property, a  
business entity of form unknown; 3M Property  
Investment Co., a business entity of form  
unknown; Frank Lane as Trustee of The Frank  
and Yvonne Lane Family Trust, Dated March 5,  
1993; George Lane as the Trustee of The  
George and Charlene Lane Family Trust; The  
Philip H. Arklin Family Trust Dated April 28,  
1994; The Three Arklin Limited Liability  
Company; Jung N. Tom; Tumbleweed  
SunTower, LLC; U.S. Borax, Inc., a business  
entity of form unknown; Craig Van Dam;

1 Delmar D. Van Dam; Gary Van Dam; Gertrude  
2 J. Van Dam; Samuel Kremen; Vulcan Materials  
3 Company, a business entity of form unknown;  
4 Vulcan Lands Inc., a business entity of form  
5 unknown; WAGAS Land Company LLC; WDS  
6 California II, LLC; Wm. Bolthouse Farms, Inc.,  
7 a business entity of form unknown; Willow  
8 Springs Company, a business entity of form  
9 unknown; Donna Wilson; Nina Wilson; Ramin  
10 Zomorodi; enXco Development Corporation, a  
11 business entity of form unknown; and DOES 1  
12 through 1000;

13 Defendants.

14 Plaintiff, Richard A. Wood, by his counsel, alleges on information and belief as follows:

15 I.

16 NATURE OF THE ACTION

17 1. Plaintiff brings this action on behalf of himself and the class of certain other  
18 private landowners in the Antelope Valley (as defined below) seeking a judicial determination of  
19 their rights to use the groundwater within the Antelope Valley Groundwater Basin ("the Basin").

20 2. As overlying landowners, Plaintiff and the Class have a property right in the water  
21 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin's  
22 groundwater for domestic purposes under California Water Code section 106. The Basin has  
23 been adjudicated Basin, thereby requiring reduction or diminution of the groundwater rights of  
24 some parties overlying the Basis. Plaintiff and the Class contend that their domestic  
25 groundwater rights must be accorded priority over non-domestic uses, including those rights  
26 relating to farming.

27 II.

28 JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the California  
Constitution, Article XI, § 10 and under California Code of Civil Procedure ("CCP") § 410.10.

4. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Plaintiff resides in Los Angeles County, a number of defendants reside in this County, and a substantial part of the unlawful conduct at issue herein has taken place in this County. In addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is pending in this Court.

### III.

## THE PARTIES

6. Plaintiff RICHARD A. WOOD ("Wood" or "Plaintiff") resides in Lancaster, California. Wood owns approximately 10 acres of property at 45763 North 90<sup>th</sup> Street East in Lancaster, California, within the Basin. Plaintiff's property overlies percolating groundwater, the precise extent of which is unknown.

7. Defendants (referred to alternatively as "Overliers" or "Defendants") are persons and entities who claim rights to use groundwater from the Basin, whose interests are in conflict with Plaintiff's interests. On information and belief, each of the entity defendants is in good standing and legally permitted to conduct business in California.

8. Plaintiff alleges on information and belief that at all relevant times DOE Defendants 1 through 1000, inclusive, are persons or entities who either are currently taking or providing water from the Basin or claim rights to take groundwater from the Basin. Plaintiff is presently unaware of the true names and identities of those persons sued herein as DOE Defendants 1 through 1000 and therefore sues these Defendants by these fictitious names. Plaintiff will amend this Complaint to allege the Doe Defendants' legal names and capacities when that information is ascertained.

IV.

## FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

9. The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a

1 groundwater divide and on the north by various geographic features that separate it from the  
2 Fremont Valley Basin.

3 10. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the  
4 Basin's recharge comes from runoff from the surrounding mountains and hills -- in particular,  
5 from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other  
6 portions of the Valley.

7 11. The Basin has two main aquifers -- an upper aquifer, which is the primary source  
8 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin  
9 have been productive and have met the needs of users in conjunction with other sources of water,  
10 including the State Water Project.

11 12. In recent years, however, population growth and urban demands have led to  
12 increased pumping and declining groundwater levels. Plaintiff and the Class are informed and  
13 believe that at some yet unidentified point in the past, the Defendants began to extract  
14 groundwater from the Antelope Valley to a point above and beyond an average annual safe yield.  
15 Plaintiff and the Class are further informed and believe that future population growth and  
16 demands will place increased burdens on the Basin. If the trend continues, demand may exceed  
17 supply which will cause damage to private rights and ownership in real property. Presently, the  
18 rights to the Basin's groundwater have not been adjudicated and there are no legal restrictions on  
19 pumping. Each of the Defendants is pumping water from the Basin and /or claims an interest in  
20 the Basin's groundwater. Despite the actual and potential future damage to the water supply and  
21 the rights of owners of real property within the Valley, the Defendants have knowingly  
22 continued to extract groundwater from the Basin, and increased and continue to increase their  
23 extractions of groundwater over time. The Defendants continued the act of pumping with the  
24 knowledge that the continued extractions were damaging, long term, the Antelope Valley and in  
25 the short term, impairing the rights of the property owners.

26 13. Plaintiff and the Class are informed and believe that the Defendants have pumped  
27 water in excess of the safe yield.

1           14. Various water users have instituted suit to assert rights to pump water from the  
2 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators  
3 have brought suit asserting that they have prescriptive rights to pump water from the Basin,  
4 which they claim are paramount and superior to the overlying rights of Plaintiff and the Class.  
5 Those claims threaten Plaintiff's right to pump water on his property.

6           15. In 1983, Plaintiff purchased his ten (10) acre property in the Antelope Valley to  
7 serve as his sole residence, which has continued to be the case to date. The most important and  
8 fundamental aspect of his purchase was the property right to use water below his land. At all  
9 relevant times, Plaintiff has extracted and used groundwater from beneath his property for  
10 standard residential purposes. Plaintiff's right to use water below the surface of the land is a  
11 valuable property right. Without the right to use the water below his property, the value of  
12 Plaintiff's land is substantially reduced.

13           16. Plaintiff is informed and believes that Defendants have extracted so much water  
14 from the Basin, by extracting non-surplus water that exceeds a safe yield for a period as yet  
15 undetermined, that his ability to pump water is threatened. Plaintiff is further informed and  
16 believes that the water level has fallen to such an unreasonable level that his property right in the  
17 use of the water has been infringed or extinguished and his interest in the real property has been  
18 impaired by the diminution of its fair market value. The Defendants have made it economically  
19 difficult, if not impossible, for him to exercise his future right to use the water because they have  
20 extracted too much water from the supply in the Basin. His water rights and the value in the real  
21 property have been damaged and will continue to be damaged unless this court intervenes on his  
22 behalf and on behalf of all class members.

23           17. Plaintiff brings this action on behalf of the following class:

24                 All private (i.e., non-governmental) persons and entities that own real property  
25 within the Basin, as adjudicated, and that have been pumping groundwater on their property  
26 within the five year period preceding the filing of this action for domestic purposes. The Class  
27 excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any  
28 defendant has a controlling interest or which is related to or affiliated with any of the defendants,

1 and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded  
2 party. The Class also excludes all persons and entities to the extent their properties are connected  
3 to a municipal water system, public utility, or mutual water company from which they receive  
4 water service, as well as all property pumping 25 acre-feet per year or more on an average annual  
5 basis at any time.

6 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's  
7 claims are typical of the claims of the members of the Class. Plaintiff and members of the class  
8 have sustained damages arising out of the conduct complained of herein.

9 19. Plaintiff will fairly and adequately protect the interests of the members of the  
10 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class  
11 members he seeks to represent. Plaintiff has retained competent counsel experienced in class  
12 action litigation to ensure such protection.

13 20. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of  
15 no difficulty that will be encountered in the management of this litigation that would preclude its  
16 maintenance as a class action.

17 21. There are common question of law and fact as to all members of the Class, which  
18 predominate over any questions affecting solely individual members of the Class. Specifically,  
19 the Class members are united in establishing (1) their priority to the use of the Basin's  
20 groundwater given their capacity as overlying landowners; (2) the determination of the Basin's  
21 characteristics including yield; and (3) the availability of injunctive relief.

#### 22 FIRST CAUSE OF ACTION

##### 23 (For Declaratory Relief Against All Defendants)

24 22. Plaintiff realleges and incorporates herein by reference each of the allegations  
25 contained in the preceding paragraphs of this Complaint.

26 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights  
27 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and  
28 beneficial uses on their respective properties.



1           24. Plaintiff is informed and believes, and on the basis of that information and belief  
2 alleges, that each of the defendants presently extracts groundwater from the Basin and/or asserts  
3 rights to that groundwater which conflict with the overlying rights of Plaintiff and the Class.

4           25. Plaintiff is informed and believes and, on the basis of that information and belief,  
5 alleges that each of the Defendants extracts groundwater primarily for non-domestic use.

6           26. The Court has adjudicated the Basin as being in a state of overdraft, setting the  
7 safe yield at 110,000 acre-feet per annum. Plaintiff is informed and believes and on that basis  
8 alleges that the total claims to the groundwater rights in the Basin far exceed the safe yield set by  
9 the Court, thereby requiring reduction or diminution of the claims of some persons or entities  
10 claiming rights to use groundwater in the Basin.

11           27. Plaintiff's and the Class' present overlying domestic uses of the Basin's  
12 groundwater are superior in right to any non-domestic overlying rights held by the Defendants.  
13 As stated in California Water Code section 106, "It is hereby declared to be the established  
14 policy of this State that the use of water for domestic purposes is the highest use of water and  
15 that the next highest use is for irrigation."

16           28. Plaintiff's and the Class' overlying rights need to be adjudicated and apportioned  
17 in a fair and equitable manner as against all Defendants.

18           29. Plaintiff and the Class seek a judicial determination that their rights as overlying  
19 users are superior to the rights of the non-domestic overlying use of Defendants.

20           30. Plaintiff and the Class further seek a judicial determination as to the priority and  
21 amount of water that all parties in interest are entitled to pump from the Basin.

## 22                           SECOND CAUSE OF ACTION

### 23                           (Against All Defendants to Quiet Title)

24           31. Plaintiff realleges and incorporates herein by reference each of the allegations  
25 contained in the preceding paragraphs of this Complaint.

26           32. Plaintiff and the Class own land overlying the Antelope Valley alluvial  
27 groundwater basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and  
28 reasonably use groundwater on their land.

1           33. Plaintiff and the Class herein request a declaration from the Court quieting title to  
2 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

3  
4           WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as  
5 follows:

6           1. Declaring that Plaintiff's and the Class' overlying rights to use water from the  
7 Basin are superior and have priority vis-a-vis all non-domestic overlying users;

8           2. Apportioning water rights from the Basin in a fair and equitable manner and  
9 enjoining any and all uses inconsistent with such apportionment;

10          3. Awarding Plaintiff and the Class the costs of this suit, including reasonable  
11 attorneys' and experts' fees and other disbursements; as well as such other and further relief as  
12 may be just and proper.

13  
14 DATED: May 21, 2013

LAW OFFICES OF MICHAEL D. McLACHLAN, APC  
LAW OFFICE OF DANIEL M. O'LEARY

15  
16  
17 By: 

18 Daniel M. O'Leary  
19 Attorneys for Plaintiff  
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